



CHAPTER X: ADOPTION

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A. Introduction

When parental rights have been terminated and the permanent plan for a child is adoption, there are a number of issues that must be considered in order to conduct thorough and effective review hearings, ensure funding for the child and the adoptive family (where appropriate), and complete the adoption. These issues include:

- ◆ The Multiethnic Placement Act;
- ◆ Adoption Recruitment Best Practices;
- ◆ Inter-jurisdictional Adoptions and Interstate Compact on the Placement of Children;
- ◆ Adoption Assistance Subsidies;
- ◆ Non-Recurring Adoption Expenses and Medical Expenses;
- ◆ Post-Adoptive Services;
- ◆ Adoption Assistance Agreements; and
- ◆ Compliance with Idaho's Adoption Statute.

All ICWA related issues should have been identified and addressed substantially earlier in the process. However, because parties may have overlooked ICWA and failed to identify an Indian child and interested Indian caregivers early in the case, it is critical to inquire at each hearing whether ICWA applies and has been complied with. Failure to do so may cause substantial delays even at this point in the process!¹

B. The Multiethnic Placement Act

For each child with special needs who is adopted, another child is still waiting for a family.² Children of color represent a higher number of those who are waiting. A 1992 study entitled *Adoption Services for Waiting Minority and Non-minority Children*³ found that ethnicity was the single strongest predictor of whether a child was in an adoptive placement. This study found that African-American children constituted about 37% of the children who are free for adoption but who have not yet been placed. Overall, African-American, Hispanic, and Native American children were found in the child protection system at three times their proportion to the nation's population.

At any given time, an estimated 1.5 % of foster children - about 8,000 - are available for adoption and, as yet, no adoptive family has been identified for them.

More current data shows that in 1998, 30% of the children waiting for adoptive homes were white and 40% were black, while in 1999, 40% of the children adopted were white and 43% of the children adopted were black.⁴

The general population in Idaho is not particularly diverse. According to 2000 Census statistics, Idaho's population is 91% white. The largest racial minority in Idaho is American Indians, representing approximately 1.4% of the state's population. Approximately 7.9% of the population is Hispanic or Latino (of any race).⁵ In 2001, just over 9% of the children entering out-of-home care were racial minorities. During that same year, well over 10% of the children entering care were Hispanic.⁶

Because of the disproportionate lack of homes for minority youth throughout the country, ethnicity was categorized as a "special need" factor for agency adoption purposes and also resulted in passage of the Multiethnic Placement Act of 1994 (MEPA).⁷ MEPA was intended to strengthen child protection practice relative to children of color and to remove barriers to interethnic adoption. MEPA was amended by the Interethnic Placement Act (IEPA) in 1996. As amended, the Act

¹ ICWA is discussed extensively in Chapter XI of this Manual.

² J. ROSENTHAL, V. GROVE, *ADOPTION, RACE AND IDENTITY: FROM INFANCY THROUGH ADOLESCENCE* (1992).

³ Submitted under contact to DHHS, Office of Human Development Services, Rockville MD 1996.

⁴ Data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) was provided by Dr. Penelope L. Maza, Senior Policy Research Analyst, the Children's Bureau.

⁵ U.S. Census Bureau, Idaho Fact Sheet, *available at*

http://factfinder.census.gov/servlet/SAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=&_cityT own=&_state=04000US16&_zip=&_lang=en&_sse=on (visited on February 1, 2005).

⁶ Child Welfare League of America, National Data Analysis System, available at http://ndas.cwla.org/data_stats (visited February 1, 2005).

⁷ 42 U.S.C. § 1996(b).

provides that states and state entities that receive federal funds and are involved in adoption and foster care may not:

... (A) deny to any individual the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the individual or of the child involved; or (B) delay or deny the placement of a child for adoption or into foster care on the basis of the race, color or national origin of the adoptive or foster parent or the child involved⁸

MEPA makes clear that agencies receiving federal funding are required to make special efforts to recruit minority foster care and adoptive homes.⁹ The Act prohibits agency practices that routinely require ethnic matching of child and family, and it prohibits delays resulting from attempts to find same-ethnicity placements.¹⁰ MEPA allows consideration of ethnicity, color or national origin based on facts of specific cases but gives no clear guidelines for such consideration.¹¹

Statistics from 1998 suggest that approximately 15% of adoptions are transracial.¹² Until clearer guidelines emerge regarding when ethnicity can be considered as a factor, the North American Council on Adoptable Children (NACAC) suggests that when transethnic placements occur (approximately 18% to 20% of adoptions are transethnic),¹³ agencies must prepare families to handle the unique responsibilities of transethnic parenting. Transethnic adopting families need access to information and resources so they can effectively teach their children how to take pride in their heritage and prosper as a member of a minority culture.

IDHW, lawyers, and judges working on cases must ensure that policies and practices do not deter reunification services and relative placements for families of color. IDHW and judges monitoring cases must work to ensure that there are adequate programs for the recruitment of foster families and adoptive families that are reflective of the ethnicity of the children needing such placements. In addition, when an adoptive home must be recruited for a minority child, IDHW and the court should ensure that all available specialized placement agencies are being used. Consistent with MEPA, courts must ensure that ethnicity does not delay or deny a child an appropriate foster or adoptive placement. Finally, when a transethnic placement occurs, IDHW and the court must ensure that the child and the parents receive adequate preparation, information, and resources to make the placement a success.

⁸ *Id.*

⁹ 42 U.S.C. § 622(b). See Michelle-Marie Mendez & Frank E. Vandervort, *The Multi-Ethnic Placement Act*, available at http://www.ssw.umich.edu/tpcws/articles/legal_MEPA.pdf (visited February 1, 2005).

¹⁰ See 42 U.S.C. § 1996b. MEPA expressly excludes ICWA from its requirements. *Id.*

¹¹ This interpretation of the act has been consistently followed by the U.S. Dept. of Health and Human Services, Office for Civil Rights in its guidance on MEPA. See *OCR Guidance* available at <http://www.hhs.gov/ocr/mepa/ocrguidance.html> (visited February 1, 2005).

¹² National Adoption Information Clearinghouse (August 2000) available at http://www.calib.com/naic/pubs/s_number.htm (visited February 1, 2005).

¹³ Data reported by Jack Kroll, Director NACAC. See SUSAN CUNNINGHAM & JENETTE WIEDEMEIER, *TRANSRACIAL PARENTING PROJECT: PARENTING RESOURCE MANUAL* (National Council on Adoptable Children 1998)

C. Adoption Recruitment Best Practices

ASFA requires that reasonable efforts extend beyond the permanency planning hearing to achievement of permanency for a child and closure of the case.¹⁴ Adoption recruitment is one of the activities that judges must now determine to be “reasonable.”¹⁵ This determination includes whether the child welfare agency has:

- ◆ adequate programs to recruit and identify prospective adoptive parents, both locally and beyond state boundaries;
- ◆ adequate staff to complete home studies in a timely manner and to prepare adoption assistance agreement and interstate documentation; and
- ◆ appropriate and accessible services to place and stabilize a child in the permanent home.

Adoption recruitment must encourage collaboration with other agencies and the community. For an Indian child, it is essential that recruitment include the child's tribal community in order to maximize the possibility of recruiting a Native American home.¹⁶ Recruiters must reach out to families, bring families forward who express interest, and design the recruitment processes to retain the families' interest by assisting them through a timely process of application, approval, full disclosure, and placement. Components of effective adoption recruitment include:¹⁷

- ◆ a clear understanding of the demographics of children awaiting adoption;
- ◆ a strong agency reputation in the community with validation by respected community organizations and leaders (or, in the alternative, collaboration with agencies who do have a strong community reputation and who will serve as the “front door” to the recruitment process);
- ◆ excellent “customer service” to families who express interest, starting with a timely and supportive response to the initial inquiry and extending to access to supports and services both before and after achievement of permanence and closure of the case;
- ◆ a consistent agency-wide philosophical approach to adoption, including foster care units and adoption units who can communicate and work together effectively, necessary staff resources (including staff training), and accessibility of offices and services to targeted communities;
- ◆ cultural competence, with a congruent set of behaviors, policies, and attitudes, and community outreach that understands and is respectful of the community's culture;
- ◆ programs that make sure that foster parents are encouraged and supported, when appropriate, to become adopting families;
- ◆ recruitment programs that include both public awareness and information and child-specific components such as television, newspaper, billboards, and adoption exchanges;

¹⁴ 45 C.F.R. §1356.21(c)(2)(ii)(“The State agency must obtain a judicial determination that it has made reasonable efforts to *finalize* the permanency plan . . .”)(emphasis added). See also CECELIA FIERMONTE & JENNIFER L. RENNE, MAKING IT PERMANENT: REASONABLE EFFORTS TO FINALIZE PERMANENCY PLANS FOR FOSTER CHILDREN 39 (2002)(“The purpose of the reasonable efforts inquiry is to (1) ensure that the agency is working diligently to secure a child’s adoption, and (2) ensure the adoption process is thorough to reduce the risk of disruption later.”).

¹⁵ 42 U.S.C. § 675(5)(E). See MAKING IT PERMANENT, *supra* note 14 at 40-41 (“Under ASFA, when the permanency plan has been changed to adoption, the agency is required to identify recruit, and process prospective adoptive homes.”).

¹⁶ If there is a possibility that a child may be a member of a tribe or that the child may be eligible for membership in a tribe, the case is governed by the Indian Child Welfare Act. The requirements of that act are covered in detail in Chapter XI of this manual.

¹⁷ Taken in part from D. LAKIN & L. WHITFIELD, ADOPTION RECRUITMENT: MEETING THE NEEDS OF WAITING CHILDREN, ADOPTION POLICY AND SPECIAL NEEDS CHILDREN (1997).

- ◆ printed materials, public information announcements, adoption events, and community outreach;
- ◆ internet sites and other means by which adoption information can be made readily available both locally and nationally;
- ◆ contracts with other states and non-profit organizations to conduct recruitment activities in geographic areas outside of the agency's jurisdiction;
- ◆ good relations with previous adoptive and foster parents, since word of mouth is such an effective recruitment tool;
- ◆ use of parents who have already adopted children as “parent buddies” to help guide prospective adoptive parents through the process; and
- ◆ strong and active collaboration between agencies and jurisdictions, so that children waiting for adoption may be placed with a family in another agency, county, or state, if appropriate.

In order to make meaningful reasonable efforts findings, judges must understand the agency's overall adoption policies and processes as well as know how these processes are working in an individual case. Not only is it important for judges to make reasonable efforts findings in individual cases, but judges must also advocate and collaborate with IDHW and community leaders to ensure that all components of effective adoptive recruitment exist for the neglected and abused children in their community.

D. Inter-jurisdictional Adoptions and Interstate Compact on the Placement of Children (ICPC)¹⁸

ASFA contains two provisions that relate to interjurisdictional adoption issues. ASFA requires that state child welfare plans:¹⁹

- ◆ specify that the state will not deny or delay the placement of a child for adoption when an approved family is available outside of the court jurisdiction that has the responsibility for handling the child's case; and
- ◆ contain assurances that the state will develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

Furthermore, ASFA establishes a penalty to be assessed against federal foster care funds for states that are found to deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction.

ICPC provides the legal framework for the placement of children across state lines, including adoptive placement. All interjurisdictional adoptive placements must be approved by the ICPC with the exception of those occurring within Indian reservations. Idaho has codified the ICPC at Idaho Code § 16-2101 *et seq.*

Because the children for whom adoptive homes must be recruited are among the most difficult to place (due, in part, to an older age, their need to be placed with siblings or other special

¹⁸Information condensed from the GAO report, *Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption Process*, November 1999. The Interstate Compact on the Placement of Children has been codified in Idaho at Idaho Code § 16-2101 – 2107.

¹⁹42 U.S.C. § 622. These plans are required in order to receive federal foster care funds for maintenance of foster children, specific administration costs associated with foster care programs, and adoption assistance.

considerations), such children are likely candidates for adoptive placement across jurisdictions. Searching across jurisdictional lines for an adoptive family for hard-to-place children may increase the likelihood that they will be matched with an appropriate family.

While the number of interjurisdictional adoptions is relatively small, the process is longer and more complex than the adoption process within a jurisdiction. Consequently, courts must watch for potential problem areas and ensure that these problems are being addressed. These problems and potential solutions include:

- ◆ There is no nationally accepted standard for home studies, and public child welfare agencies do not have the authority to specify the contents of a home study prepared in another jurisdiction. Consequently, the home study from the other jurisdiction may not meet the requirements of the jurisdiction that holds custody of the child.
- ◆ However, if the requesting agency notifies the agency preparing the home study of its specific requirements in advance, it is probable that the agency doing the home study will be willing to ensure that all requirements are covered.²⁰
- ◆ Although the Constitution sets the framework for states to accept the court orders of other states, neither the Congress nor case law has specifically addressed acceptance of termination of parental rights orders or adoption decrees. The Supreme Court has ruled that states are not obligated to accept judicial actions of other states in situations where minimum standards of due process have not been provided to those affected.
- ◆ There are two methods to deal with this issue. First, if a court has implemented the recommendations of this Manual regarding due process issues, minimum standards of due process should be easily met—and even surpassed. Second, some states specify in their adoption statutes that the state will accept such orders from any other state.
- ◆ Finally, states may need to improve procedures for administering and implementing the ICPC. Delays caused by the sending or receiving of a state's preparation of the ICPC approval request could cause unnecessary delays in the adoptive placement of a child.
- ◆ Judges must advocate to ensure that their state's ICPC requests are promptly processed. Ideally, an ICPC request related to adoption would be processed through the state's ICPC division within 3 days. For jurisdictions that routinely place children in a neighboring jurisdiction, border agreements can be worked out to alleviate delays in beginning home studies requested through the ICPC office.

P.L. 96-272 directed states to protect the interstate interests of adopted children. The Interstate Compact on Adoption and Medical Assistance (ICAMA) was established in 1986 to meet the P.L. 96-272 mandate. Once an interstate adopting home is found and approved for a child, ICAMA provides assistance by formalizing the delivery of medical and other services to children and their adopting families on an interstate basis. The compact recognizes that adopting parents may move

²⁰ For Indian children, the child's tribe establishes community standards for home studies. See Chapter XI of this manual for detailed discussion of ICWA

from one state to another while under adoption assistance agreements and that many special needs children will be placed with families across state lines. Operation of ICAMA is the responsibility of a designated compact administrator in each state. This administrator is located in the Title IV-E agency that coordinates with in-state and out-of-state officials to facilitate the provision of benefits and services for special needs adopted children. Approximately two-thirds of the states, including Idaho,²¹ are members of ICAMA.

E. Adoption Assistance Subsidies

For many special needs children, adoption assistance subsidies can make adoption feasible where it might otherwise not be possible. All 50 states and the District of Columbia have both federally-funded and state-funded adoption assistance programs. These programs are designed to ensure that families who adopt are provided with the financial resources and necessary services to meet a child's often costly special needs.

The Federal Adoption Assistance Program was established by the Adoption Assistance and Child Welfare Act of 1980²² as an open ended entitlement program. It provides payments for IV-E eligible children with special needs who are adopted through public child welfare agencies.²³ The federal reimbursement rate is 50% to 75%, with the match covered by state and/or county funds.²⁴ Children who are receiving federal maintenance subsidies are counted as IV-E children in determining the state's IV-E penetration rate. Adoption assistance payments may continue until the child is age 18, or, at state option, until the age of 21 if the child is mentally or physically disabled.²⁵

To be eligible for this funding, a state must have a plan describing how it will provide this assistance to adopting families. The state plan describes what adoption assistance is available and the eligibility criteria, what efforts must be undertaken to place a child without assistance before eligibility applies, when assistance will begin (i.e. on placement of the child in a prospective adoptive home), and when it will end.²⁶ IDHW has formulated an adoption assistance plan for Idaho.²⁷

There are two conditions a child must meet in order to be eligible for the federally-funded assistance program. First, the child must be IV-E eligible. Second, the child must have special needs. IV-E eligibility is based on the birth parent's financial eligibility for AFDC or the child's eligibility for SSI. Income of the adopting parent(s) is not a factor.²⁸ In order to be IV-E eligible, the court must have made determinations of "best interests" and "reasonable efforts" before ruling out a plan of reunification and approving a plan of adoption.²⁹

²¹ Idaho Code § 39-7501

²² 42 U.S.C. § 673.

²³ 42 U.S.C. § 673(b)(2).

²⁴ 42 U.S.C. § 674(a)(3).

²⁵ 42 U.S.C. § 673(b)(4).

²⁶ 42 U.S.C. § 671, 45 CFR 1356.20.

²⁷ IDAPA 16.01.06.900 *et seq.*

²⁸ 45 C.F.R. 1356.40 (c).

²⁹ 45 C.F.R. 1356.21 (b)(1).

Federal regulations define a child with special needs as a child who has a specific condition or factor that makes a child difficult to place for adoption. This definition leaves room for states to develop their own detailed definitions of special needs. IDHW has defined special needs to include the following factors:³⁰

- ◆ The child cannot or should not be returned to the home to the parents;
- ◆ The child has a physical, mental, emotional, or medical disability, or is at risk of developing such a disability based on known information about the birth family and child's history;
- ◆ The child's age makes it difficult to find an adoptive home;
- ◆ The child is a member of a sibling group that cannot be placed apart;
- ◆ The child has developed such close emotional ties with a foster family or relative family that re-placement is likely to be as traumatic to the child as removal from a natural family; or
- ◆ Except in the case of foster parent or relative adoption, the child must have been listed with a state, regional or national adoption exchange.

Regarding the amount of assistance available to adopting parents, federal law allows federally funded adoption assistance to be up to the amount that the adopting parent received as the fostering subsidy. This means that when states reduce the amount paid to an adopting parent after the adoption is finalized, they are doing so at their own choice. In addition, nothing in federal law prevents states from providing, at their own expense, additional benefits beyond the federal assistance.

It is important for judges to know the details of their state plan and which components are federally mandated as opposed to choices made by the state child welfare agency.

Federal regulations require that states receiving federal dollars for adoption assistance must also offer the same assistance options to children with special needs who are not IV-E eligible, with one exception. The exception is that means testing of the adopting family is permitted as eligibility criteria for non-IV-E eligible children. Assistance to non-IV-E eligible special needs children is totally funded by state and/or county dollars. Since all 50 states and the District of Columbia are involved in the federal adoption assistance program, all states must provide adoption assistance to all special needs children.

This information is particularly important for judges who may believe that it is appropriate to make a finding that reasonable efforts to find an adopting family have not been made but are concerned that doing so will prevent an adopting family, when located, from being able to receive adoption assistance subsidy. Such, a finding will not prevent the child from being eligible for adoption assistance when an adopting family is finally recruited.

F. Idaho's Adoption Assistance Regulations

The regulatory framework for Idaho's Adoption Assistance program can be found at IDAPA 16.06.01.900. That section provides:

³⁰ IDAPA 16.01.06.900.02.

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Service's, the Division shall respond with a determination of the child's eligibility within forty-five (45) days.

01. Determination Of Eligibility For Title IV-E Adoption Assistance. The Bureau of Family and Children's Services shall determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96- 272 (The Adoption Assistance and Child Welfare Act of 1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance:

- a. Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria both at the time of removal from his home and in the month the adoption petition is filed.
 - i. If the child is removed from his home pursuant to the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home.
 - ii. If the child is removed from the home pursuant to a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance.
- b. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs.
 - i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits;
 - ii. The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care is not relevant.
- c. Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs.
 - i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which lead to the removal of the child from his home;

- ii. At the time of the voluntary placement or relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home.
 - d. Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs.
 - i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and
 - ii. The child continues to reside in the foster home with his minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances.
 - e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs.
 - i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption.
 - ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency.
 - iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption.
 - iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption.
- 02. Factors Considered. The definition of special needs includes the following factors:
 - a. The child cannot or should not be returned to the home of the parents; and
 - b. The child has a physical, mental, emotional or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history, or
 - c. The child's age makes it difficult to find an adoptive home; or
 - d. The child is a member of a sibling group that must not be placed apart; and
 - e. State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child.

03. Determination Of Eligibility For State Funded Adoption Assistance. Children who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy.

04. Interjurisdictional Adoptions. When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho shall be responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E or state-funded adoption assistance benefits.

G. Non-Recurring Adoption Expenses and Medical Expenses

The Federal Adoption Assistance Program also provides matching funds for non-recurring adoption expenses for both IV-E and non-IV-E eligible special needs children. State or county funds cover the portion of the costs that the match does not cover. Generally, this reimbursement is available to the adopting parent at a 50% matching rate for state expenditures up to \$2,000 for the actual expenses of the adoption.³¹ Eligible expenses include, but are not limited, to attorney's fees, the adoption home study, adoption fees, and may include other expenses directly related to the legal adoption of the child.³²

All children who receive adoption assistance under Title IV-E are categorically eligible to receive Title XIX Medicaid in the state in which they live, whether or not it is the state that is party to an adoption assistance agreement. Children who receive state-funded adoption assistance are not automatically eligible for Medicaid. However, states have the option of choosing to extend Title XIX Medicaid to these children, without regard to the income of their adopting parents, if they meet eligibility criteria.³³ Since ASFA requires that states provide health insurance to children for whom there is an adoption assistance agreement and who need medical assistance for physical, mental, or rehabilitative care, most states have elected the option to make children under state-funded adoption assistance agreements Medicaid eligible.

H. Post-Adoptive Services

Many families who adopt children with special needs will require supportive services throughout childhood and adolescence. The availability of these supportive services can be the determining factor in the long-term success of many adoptions of children with special needs.

While adoption subsidies provide financial and medical assistance, many adopting parents find themselves with very troubled children, for whom their repertoire of parenting techniques and the

Adopting families for special needs children are likely to have continuing needs that peak at certain developmental periods or at times of family stress.

³¹ 45 C.F.R. § 1356.41(f)(1).

³² 45 C.F.R. § 1356.41(i) .

³³ This option was established by the Consolidated Omnibus Reconciliation Act of 1985.

usual configuration of community services are inadequate. Often the special needs of children are not obvious at the time of their adoptive placement. The damage to children from prenatal substance exposure or maltreatment may not manifest itself until well after the adoption is finalized.

Finalizing an adoption does not end the impact of the child's abusive and neglectful history. The adoption process can also have a substantial impact on family dynamics.

Many of these children, even though placed in the most loving, nurturing adoptive homes, are likely to have ongoing problems. In order to provide the full range of services to families adopting special needs children, post-adoptive service systems should include:

- ◆ **Clearinghouse** -- A clearinghouse should include information on all aspects of the adoption process, special needs, and adoption search. Parents and professionals should be able to easily access information on upcoming training and conferences, parent support groups, therapists, etc., through a website.
- ◆ **Help Line** -- A toll-free telephone help line should exist with trained staff to provide support and assistance to families seeking general information on adoption and special needs. It should provide crisis intervention and information and referral regarding available services, as well as names of specific service providers who have a special proficiency in working with adopting families and adopted children. Currently IDHW operates Idaho Care Line at 1-800-926-2588 (TDD #208 332-7205). This line is a general service referral line. Plans are also underway and have been partially implemented in Ada County to create a statewide referral line using a 211 service similar to 911.
- ◆ **Parent Training and Education** -- Parents need on-going training and education on adoption issues, including separation, grief, loss, and attachment, as well as education on the specific special needs of their children such as attention deficit hyperactivity disorder, fetal alcohol syndrome and fetal alcohol effect, learning disabilities, and the long-term effects of neglect and abuse.
- ◆ **Parent Support Groups** -- The experiences of other adopting parents are invaluable to special needs adopting parents. Parent groups offer support through the sharing of experiences that are unique to special needs adoption. By offering education and support, parent groups help keep families together and may become an excellent resource for prospective adoptive parents.
- ◆ **Individual and Family Counseling** -- Few parents are prepared to rear children who come from the foster care system. Many of these vulnerable children have experienced physical and emotional trauma as well as multiple placements and will need ongoing therapy in order to integrate into a permanent family.
- ◆ **Advocacy** -- When interacting with the educational, social services, and medical communities, adoptive families often become intimidated and frustrated trying to secure needed services for their children. Providing a trained advocate and offering advocacy training to parents enables them to communicate effectively on behalf of their children.
- ◆ **Respite Care** -- Families often face many challenges rearing their special needs children and need time away from the daily pressures and ongoing stress. Respite care comes in many forms, including hourly care, in-home respite care, and residential programs.
- ◆ **Intensive Home Based Services and Day Treatment Programs** -- Some children with multiple and severe needs may need extra in-home supports. Specially trained workers can come into the home or school to help teach the parent and teacher better methods of managing

the child's problem behaviors. Some children's problems may be so severe they require special programming in a day treatment environment.

- ◆ **Residential treatment** -- For certain periods of time in their development, some children require more care than can be provided in a family setting. Residential programs can encompass psychological, emotional, behavioral, and medical treatment.

Judges should have information about the post-adoptive service system that exists in their jurisdictions, not only for effective review of an individual case, but also to advocate for a comprehensive and effective system for all children. Many states do not offer adequate funding for post-adoptive services. Courts need to be satisfied that the necessary services will be available to support these families so they can achieve successful permanence for their adopted children.

IDHW regulations (IDAPA 16.6.01.701.09) provide for the following post-adoptive services:

Services after an adoption is final are provided within available resources. Children with negotiated adoption assistance agreements (whether from Idaho or from another state) are eligible for any **services** available to Idaho children. Children with adoption assistance either IV-E or state adoption assistance agreements are eligible for Medicaid in Idaho. A referral from an Interstate Compact on Adoption and Medical Assistance member state shall serve as a formal application for services in Idaho. Applications for Medicaid are made through Central Office.

Judges should assess the adequacy of the system in their jurisdiction by asking the following questions:

- ◆ Are funds available for needed services in addition to routine maintenance payments?
- ◆ Are regulations interpreted broadly to expand eligibility to the maximum appropriate degree?
- ◆ If funds are provided directly to the adoptive parent to purchase services, are the needed services available for purchase?
- ◆ If the funds are provided directly to the adopting parent(s) to purchase services, can funds be made available upfront when needed?
- ◆ If funds are provided directly to service providers, are the services consumer friendly and easily accessible to the child and adopting family?
- ◆ Is there a mechanism to collect consumer satisfaction information from the adopting parents who are purchasing or using the post-adoptive service? If so, what does the information identify as the strengths and weaknesses of the post-adoptive service system?
- ◆ Does the service system include all of the necessary services listed on the preceding pages to provide a full range of services to adopting families?
- ◆ Are funds flexible enough to allow the purchase and installation of items such as wheelchair ramps, special vans for the handicapped, etc., and for emergency needs when there is no other source of such funding and when lack of such funding could result in the breakup of the adopting family?

If judges find the post-adoptive services system in their jurisdiction lacking, they should make the consequences of the lack of services known to policymakers and then advocate for improved systems of post-adoptive services.

I. Adoption Assistance Agreements

Prior to finalization of a special needs adoption, an adoption assistance agreement should be made in writing between the adopting parent(s) and the social services agency. This agreement should include:

- ◆ the nature and amount of adoption assistance to be provided to the child and adopting parent(s) after the adoption is finalized;
- ◆ agreed services that will be provided to the child and the family post-finalization and the method of funding for these services;
- ◆ how medical needs of the child will be covered;
- ◆ under what circumstances the agreement can be modified either to increase or decrease payments or services;
- ◆ the continued effectiveness of the agreement if the adoptive parents move out of state; and
- ◆ names and phone numbers of persons adopting parents can contact for assistance if additional questions or needs arise.

The court should be aware of this information during review hearings to ensure that these issues are resolved with the adopting parent(s) well before the adoption is ready to be finalized.

J. The Adoption Action

1. Consent

Consent to adoption is required from the following individuals:³⁴

- ◆ The child to be adopted, if the child is over 12 years of age;
- ◆ Both parents or the surviving parent of a child who was conceived or born within a marriage;
- ◆ The mother of a child born outside of marriage;
- ◆ Any person who has been adjudicated to be the child's biological father prior to the mother's execution of consent;
- ◆ An unmarried biological father who has complied with Idaho Code § 16-1504(2);³⁵
- ◆ Any legally appointed custodian or guardian of the child;
- ◆ An unmarried, biological father who has filed a voluntary acknowledgement of paternity with the vital statistics division of IDHW pursuant to Idaho Code § 7-1106; and
- ◆ The father of an illegitimate child who has adopted the child by acknowledgement pursuant to Idaho Code § 16-1510.

If the child to be placed for adoption was abandoned pursuant to the Idaho Safe Haven Act,³⁶ parental consent does not *appear* to be possible and therefore is arguably not necessary. That Act provides for IDHW to move to terminate parental rights without notice to parents. If a putative parent does not move to assert parental rights pursuant to §39-8206(3) of that Act, and if no claim of parental rights has been filed with the Vital Statistics Unit of IDHW and a certificate to that effect is filed with the court, the court may terminate the parental rights of the unknown parents. Although the Safe Haven Act does not directly address the question of consent to adoption, presumably such consent is not necessary once the parents' rights have been terminated pursuant to

³⁴ Idaho Code § 16-1504.

³⁵ Idaho Code §§16-1504(2), (3) and Idaho Code §16-1513 purport to eliminate the necessity of obtaining consent from an unmarried biological father whose fails to comply with certain statutory preconditions. Recommended best practice is to not rely on Idaho Code §§ 16-1504(2), (3) and §16-1513 until questions regarding their constitutionality are resolved. Appendix B contains a discussion of the constitutional issues raised by these provisions.

³⁶ Idaho Code §§ 39-8201-- 8206.

the Act. To the extent this Act would permit the termination or parental rights without notice, it may be subject to constitutional challenge.³⁷

Persons whose consent is required must execute such consent in writing.³⁸ The form of the consent is prescribed by Idaho law.³⁹ The consent must be filed in the court in which the adoption petition is filed. Best practice is to sign the consent in the presence of the judge at the hearing on the adoption petition. This is particularly important with the consent of a child twelve years of age or older. With regard to the consent that may be required from IDHW, standard practice is that the Director of IDHW signs a consent that is filed with the court in advance and the assigned caseworker signs a second consent at the adoption hearing.

2. Notice

Notice of the adoption action must be provided to the following persons:⁴⁰

- ◆ Any person whose consent is required under Idaho Code §16-1504, unless that person's parental rights have been terminated or otherwise relinquished;
- ◆ Any person who has registered notice pursuant to Idaho Code §16-1513;
- ◆ The spouse of the person petitioning to adopt the child, if he or she has not joined in the petition;
- ◆ Any person who is recorded on the birth certificate as the child's father, with the knowledge and consent of the child's mother, unless such person's parental rights have been terminated or otherwise relinquished;
- ◆ Any person openly living in the same household with the child at the time the mother's consent is executed or relinquishment made, and who is holding himself out as the child's father, unless such person's parental rights have been terminated or otherwise relinquished; and
- ◆ Any person who is married to the child's mother at the time she executes her consent to the adoption or at the time she relinquishes the child for adoption.

The notice need not disclose the name of the mother of the child who is the subject of the adoption proceeding. It must be served as least twenty (20) days prior to the final dispositional hearing. The notice must also state that if the person being served wishes to object to the adoption she or he must do so within twenty (20) days of being served. If a person fails to make objection within the twenty day period, she or he waives the right to further notice.

3. Service

Notice of adoption proceedings must be personally served on individuals whose consent is necessary for the adoption. If reasonable efforts to effect personal service are unsuccessful, a court may order service by registered or certified mail to the last known address of the person to be notified and by publication.⁴¹

³⁷ See the discussion of the constitutionality of the putative father statute in Appendix B.

³⁸ Idaho Code § 16-1506(2).

³⁹ Idaho Code § 16-2005(f).

⁴⁰ Idaho Code § 16-1505.

⁴¹ Idaho Code § 16-1505(6).

For others entitled to notice, service by certified mail, return receipt requested, is sufficient.⁴²

4. The Adoption Petition

The adoption proceeding is initiated when the person or persons proposing to adopt the child file a petition in the district court of the county in which they reside. Idaho law requires that the petitioners have resided in the state for at least six consecutive months before the filing of the petition.⁴³

The adoption petition must contain the following information:⁴⁴

- ◆ the name(s) and address(s) of the petitioner(s);
- ◆ name of the child to be adopted;
- ◆ the name by which the adopted child will be known if the adoption is granted;
- ◆ the degree of relationship, if any, of the child to the petitioner(s); and
- ◆ the names of any person or agency whose consent to the adoption is necessary.

5. Social Investigation/Home Study

Idaho Law also requires that prior to the placement for adoption of a child in the home of prospective adoptive parents, a thorough social investigation of all members of the prospective adoptive family must take place.⁴⁵ This investigation must lead to a positive recommendation for adoption in order for the adoption to go forward.

In exigent circumstances where a court finds that a social investigation could not be completed before the child is placed in the home, the child may remain in the home, unless the court finds that the best interests of the child are served by other placement. The social investigation must then be initiated within five days of placement.⁴⁶

The pre-placement social investigation must be completed within sixty (60) days.

If no private social investigation is conducted, IDHW must verify the allegations of the petition within (3) days after service of the petition and must make a thorough investigation including the date and place of the child's birth, and the parentage of the child. The investigative report must include all reasonably known medical and genetic information regarding the child and the biological parents.⁴⁷

The pre-placement investigation and recommendation and the investigative report of IDHW must be filed with the court.⁴⁸

⁴² *Id.* at § 16-1505((6) and (7)).

⁴³ Idaho Code § 16-1506(1).

⁴⁴ Idaho Code § 16-1506(1).

⁴⁵ See IDAPA § 16.06.01.750 *et seq.* for regulations regarding the investigation process.

⁴⁶ Idaho Code § 16-1506(3).

⁴⁷ *Id.*

⁴⁸ *Id.*

6. Hearings

The prospective adoptive parents and the child must appear in person at the hearing on the adoption petition. At the time of the hearing, the prospective adoptive parents must execute an agreement “to the effect that the child shall be adopted and treated in all respects as . . . [their] own lawful child should be treated.”⁴⁹ In addition, the hearing on an adoption petition may be consolidated with the proceedings for termination of parental rights assuming all the requirements of the parental termination and adoption statutes are complied with.⁵⁰

At the hearing, the judge must examine each of the parties appearing at the hearing separately and must review the investigative report. The court must find that the interests of the child will be promoted by the adoption.

Finally, the adoptive parents must file an application with the Vital Statistics Unit of IDHW to have a new birth certificate issued for the child.

⁴⁹ Idaho Code § 16-1506(1).

⁵⁰ Idaho Code § 16-1506(4).